

CONTRACT REVIEW SHEET

Person Sending: Billy Wasson	Department Name: Courthouse Square
Date Sent: July 9, 1998	

The attached: (CIRCLE ONE)
 Contract Amendment #____ Grant Lease

INCOMING FUNDS? YES NO (CIRCLE ONE)
 If incoming funds you must attach a Revenue Management Sheet

Contractors Name: Arbuckle Costic Architects, Inc.						
Date From: May 1, 1998	Date To: July 1, 2000					
Amount of Contract or Amendment: 69% of hard costs						
If an Amendment, New Contract Total = \$0/a						
Certificates of Insurance Attached:	<table border="1"> <tr> <td>Liability (circle one)</td> <td>Workers Comp (circle one)</td> <td rowspan="2">If no insurance attached, why not?</td> </tr> <tr> <td>Yes No</td> <td>Yes No</td> </tr> </table>	Liability (circle one)	Workers Comp (circle one)	If no insurance attached, why not?	Yes No	Yes No
Liability (circle one)	Workers Comp (circle one)	If no insurance attached, why not?				
Yes No	Yes No					

Process taken to select contractor:

Verbal quote:____ Written quote:____ RFP:____ Competitive Bid:____ Renewal:____

(Attach copy for reference)

Description of Contract Services:

Provide architectural and engineering services related to Courthouse Square project.

Contract date amended to extend to 7/1/2000

For Risk Management Use			
Date Risk Received: 7/9/98		Date Scheduled on BOC Agenda: 7/15/98	
Authorization for Health Administration to sign on behalf of BOC: yes <input checked="" type="radio"/> no <input type="radio"/>		Additional Comments: All agreements approved as to form. mmp	
Staff Review Signatures:			
[Signature] Risk Management _____ date _____		[Signature] Fiscal Services _____ date 7/10/98	
General Services _____ date _____		Legal Counsel _____ date _____	

Date: **7/15**
 Returned to Department: **Peagay / JS** signatures: **[Signature]** Copy to Fiscal Services: **1**
[Signature] **[Signature]**

SALEM AREA TRANSIT

3140 Del Webb Avenue NE
Salem, OR 97303-4165

503-588-2424 Fax 588-0209
E-mail: cherriots.org

June 18, 1998

Leonard Lodder
Arbuckle Costic Architects, Inc.
363 State St.
Salem, OR 97301

*Cindy
Contract
1998*



Dear Leonard,

Attached are the various elements which comprise the contract package for architectural and engineering services related to Courthouse Square. We believe you will find them in order and consistent with the discussions we've had between our agencies and your firm.

Two of the elements are previous agreements which have been signed by the parties, specifically the interim agreement and the letter of agreement regarding hard costs. Two additional elements remain to be signed—the addendum to the interim agreement and the AIA contract. The remaining two elements, the supplemental provisions to the AIA contract and the Federal Contract Requirements Addendum, are attachments to the contract package which don't require signature.

The contract package is forwarded to you for your firm's execution. There are three original contract packages—Arbuckle Costic's representative should sign the three packages at the indicated locations, and return them to John Whittington at the Transit District. One complete, signed contract package will be returned to you once all signatures have been affixed. The District and the County will also retain an original set.

A handwritten signature in black ink, appearing to read "John Whittington", written over a horizontal line.

John Whittington
Project Coordinator
Salem Transit District

A handwritten signature in black ink, appearing to read "Billy Wasson", written over a horizontal line.

Billy Wasson
Project Coordinator
Marion County

INTERIM AGREEMENT

INTERIM AGREEMENT FOR ARCHITECTURAL SERVICES

Agreement made, effective as of Oct 24, 1997, by and between Marion County, a political subdivision and body politic of the state of Oregon, and the Salem Area Mass Transit District, a political subdivision and body politic of the state of Oregon, hereinafter referred to as "Owner", and Arbuckle Costic Architects, Inc., an Oregon corporation, hereinafter referred to as "Architect".

The parties recite, declare and agree as follows:

1. Owner owns Block 5, SALEM, Marion County, Oregon. Owner intends to build a mixed use facility on the real property generally consisting of underground parking facilities, a transit center, administrative offices for Owner, and a commercial retail site to be leased to private parties for development of retail and other private facilities. The project is known as Courthouse Square.
2. The project is undergoing substantial redesign. Owner needs consultation services of an architect. Architect has provided similar services for the original design of the project, and wishes to continue in a consultative role. Owner wishes to retain the consulting services of Architect.
3. Owner and Architect acknowledge and agree that as of July 28, 1997, Owner has paid Architect the sum of \$ 434,881.17, which amount is payment in full for services rendered to that date, with the sole exception of \$8,560.00 (which amount was billed after July 28, 1997 for structural revisions) and \$15,462.12 which amounts will be paid promptly following execution of this Agreement. The parties have no further commitment to each other.
4. Both parties expect to negotiate an agreement retaining Architect to act as the architect for the design and construction of the project. Both parties expect construction to begin on or about January 1, 1998, and to be completed on or about May 1, 1999. Both parties agree that the Architect's fee is to be not more than 6% of hard costs. The parties agree that all of the amounts paid or payable to Architect for services rendered on and after July 28, 1997 and, of the sums paid or payable to Architect for services rendered prior to July 28, 1997, the sum of \$71,209.00 shall be applied as a credit against the amount of the fee payable to Architect under any final agreement retaining Architect as the architect for the project. Upon determination of the final GMP, the Owner and Architect agree to execute an agreement in the form attached hereto as Exhibit A.
5. The project is funded in part by a grant from the FTA. This agreement is subject to FTA contract requirements imposed upon Owner, as attached to Exhibit A and incorporated by this reference as if fully set forth herein.
6. Architect agrees to provide services as a consulting architect with that standard of care, skill and diligence normally provided by professional architects. The work to be performed includes the following:
 - a. Consult with Owner to ascertain the requirements of the project and confirm such requirements to Owner.
 - b. Preparation of schematic, design development and construction documents, sufficient for the preparation of a Guaranteed Maximum Price (GMP) from the general contractor, in consultation with, and

with the input of, Owner, Owner's project manager and other consultants.

- c. Consult with Owner, Owner's project manager and other consultants regarding the general contractor's statements of the probable construction cost of the project as designed, including any changes in cost resulting from requirements or general market conditions, from time to time as reasonably necessary to expedite preparation of final construction documents and estimated GMP.
- d. Consult with Owner, Owner's project manager and other consultants regarding general contractor's estimated GMP based upon the final construction documents, which Owner may use in evaluating feasibility of the project, bids for construction of the project and other information which Owner may acquire to determine the project design and cost.

7. Architect shall provide engineering or other technical assistance through employment of outside consultants (subcontractors) only with the prior written request and approval of Owner. Said request and approval shall disclose the cost and terms of such subcontract, but no such approval by Owner shall create any contractual obligations from Owner to any such subcontractor and no such subcontractor shall be a third party beneficiary of this agreement or any final agreement for architectural services.

8. Owner agrees to pay Architect on an hourly basis for services provided by Architect under this agreement. Owner and Architect agree that the hourly fees shall be those set forth in Article 11.3.1 of Exhibit A. Payment shall be made monthly based upon an invoice submitted by Architect detailing tasks performed and time spent. Owner agrees to pay Architect a maximum fee not to exceed \$ 687,500.00 for all work indicated in this agreement. Owner shall reimburse Architect for the reasonable amount of expenses necessarily incurred by Architect in the performance of services under this agreement.

9. The parties acknowledge that the construction documents, sufficient for the general contractor to provide Owner with a GMP under Section 6b, are not final construction documents. The general contractor will be required to make assumptions where information is missing or incomplete to arrive at a GMP. If the general contractor makes a claim against Owner for increased cost or expense of construction because the final construction documents differ from the assumptions made by the general contractor with respect to missing or incomplete information, Owner agrees not to hold Architect liable for such claim.

10. Unless sooner terminated by Owner, this agreement shall remain in force for a period of time reasonably required to complete construction documents and to arrive at a final estimated GMP within Owner's budget.

11. Owner may terminate this agreement at any time by a notice in writing to Architect. If this agreement is terminated, Architect shall deliver to Owner all finished and unfinished documents, data, studies, and reports prepared by Architect under and pursuant to this agreement, and these shall become the property of Owner. Payment shall be made by Owner for all the work performed

before the effective date of such termination. Such payment shall be in full settlement for services rendered under and pursuant to this agreement.

12. The parties will not assign or transfer this agreement, nor any interest in this agreement.

13. This agreement shall be governed by the laws of the state of Oregon. Any action commenced in connection with this agreement shall be commenced in the district or circuit court of Marion County.

14. Architect shall maintain at all times commercial general liability insurance, and property damage/automobile insurance in amounts not less than: \$100,000 property damage per claimant, \$200,000 all other claims per claimant, and \$500,000 all claims. Architect shall obtain and maintain at all times during the term of this agreement, professional liability insurance with limits of not less than \$1,000,000 and worker's compensation insurance with statutory limits and employer's liability insurance. Architect shall save harmless, indemnify and defend owner from any and all claims, damages, losses, and expenses including but not limited to reasonable attorney's fees arising from or resulting from Architect's performance of or failure to perform the obligations of this agreement, to the extent the same are caused by the negligence or misconduct of Architect or its employees or agents.

15. Architect shall comply with all applicable Federal, State and local laws, rules and regulations, including all applicable provisions of ORS 279.310 through 279.430, which are incorporated herein by this reference.

16. This agreement, the transmittal letter from Clark, Lindauer, McClinton dated October 15, 1997, and the exhibits referred to herein, constitute the entire agreement between the parties. No modification of this agreement is binding on either party unless the modification is in writing, and signed by the parties.

ARCHITECT:

by

title

PRESIDENT

MARION COUNTY BOARD OF COMMISSIONERS

Randall Frank 10/22/97
Mary Pegg
Ray Bell

SALEM AREA MASS TRANSIT DISTRICT

by

title

GENERAL MANAGER

APPROVED AS TO FORM:

10/22/97
County Legal Counsel
County Contracts Coordinator
Transit Legal Counsel

ADDENDUM TO THE INTERIM AGREEMENT

ADDENDUM TO

INTERIM AGREEMENT FOR ARCHITECTURAL SERVICES

Agreement made, effective as of May 1, 1998, by and between Marion County, a political subdivision and body politic of the state of Oregon, and the Salem Area Mass Transit District, a political subdivision and body politic of the state of Oregon, hereinafter referred to as "Owner", and Arbuckle Costic Architects, Inc., an Oregon corporation, hereinafter referred to as "Architect".

The parties recite, declare and agree as follows:

1. Owner and Architect entered into an Interim Agreement for Architectural Services dated October 24, 1997. Since the date of that agreement, the parties have discussed the scope of the services to be rendered by Architect, the contract procurement guidelines of the Federal Transit Administration, and the extent of credit for payments for prior services that should be applicable to Architect's services under the Interim Agreement and the final agreement for architectural services (which final agreement is attached as Exhibit A to the Interim Agreement).

2. The parties desire to amend the Interim Agreement as set forth herein.

3. Paragraph 4 of the Interim Agreement is hereby amended to read as follows:

4. The parties expect construction to begin on or about December 1, 1998, and to be completed on or about July 1, 2000. Both parties agree that the Architect's fee is to be not more than 6% of hard costs. Excepting only amounts that are separately itemized by Architect to Owner in detailed billing statements for extra services performed by Architect beyond the scope of basic services, and consisting of representation of Owner at public meetings and at public presentations since November 1, 1997 (the amount of which as of the date of this Agreement is \$28,902.50), the parties agree that \$180,421 of the sums paid or payable to Architect for services rendered prior to July 28, 1997 and all of the amounts paid or payable to Architect for services rendered on and after July 28, 1997 shall be applied as a credit against the amount of the fee payable to Architect under any final agreement retaining Architect as the architect for the project. Following completion of the review and recommendations of the Owner's jointly appointed advisory panel, known as the Special Project Oversight Committee, and upon Owner's decision to proceed with the project, the Owner and Architect agree to execute an agreement in the form attached hereto as Exhibit A. The execution of the final agreement for architectural services, attached as Exhibit A or in such form as may be subsequently modified and mutually agreed upon by the parties, shall not supersede the terms of this Agreement, and this Agreement shall remain in full force and effect.

4. Paragraph 6b and 6c of the Interim Agreement is hereby amended to read as follows:

b. Preparation of schematic, design development and construction documents, sufficient for the bidding and award of a general construction contract based on sealed bids, in consultation with, and

with the input of, Owner, Owner's project manager and other consultants.

- c. Provide construction cost estimation services and consult with Owner, Owner's project manager and other consultants regarding the estimates of the probable construction cost of the project as designed, including any changes in cost resulting from requirements or general market conditions, from time to time as reasonably necessary to expedite preparation of final construction documents and bidding documents. Architect agrees that the charges to Owner for construction cost estimation services shall be equal to one-half of the out of pocket charges incurred by Architect for such services under an approved subcontract, but in no event will the charges to Owner for such services exceed \$16,500:00.

5. Paragraph 6d and paragraph 9 of the Interim Agreement are hereby deleted in its entirety.

6. Paragraph 10 of the Interim Agreement is hereby amended to read as follows:

10. Unless sooner terminated by Owner, this agreement shall remain in force for a period of time reasonably required to complete construction documents, to complete bidding documents, to prepare and distribute invitations to bidders, to review and evaluate bids, to advise Owner regarding bids and to assist Owner in the selection of a bidder and award of a contract.

7. The following changes are made to the final agreement for architectural services (which final agreement is attached as Exhibit A to the Interim Agreement):

- a. Sections 2.3.2 and 2.4.3 are to be included, and not stricken out.
- b. The second to the last line in Section 2.5.1 is revised to read: "obtaining bids and assist in awarding and preparing contracts for construction."
- c. Section 5.2.2 is deleted. Section 5.2.4 is revised to read: "If Owner does not award a contract to the lowest responsible and responsive bidder, Owner may direct Architect to revise the Project's scope and quality to reduce the Construction Cost." Section 5.2.5 is revised to delete the words "Clause 5.2.4.2" and insert in lieu thereof the words "Section 5.2.4." In addition, the following is added to the last sentence of Section 5.2.5: ", provided, however, that no part of the fee allocated for construction services shall be paid if the Construction Phase is not commenced, and no fees shall be paid for services not performed by Architect."
- d. Section 11.2.1 is revised to read as follows: "For basic services, as described in Article 2, and any other services included in Article 12 as part of basic services, basic compensation shall be fixed in an amount equal to six percent (6%) of the sum of the following amounts: (i) 20% of the amount of the hard construction cost (labor and materials and general contractor's profit and overhead) portion of the amount of the construction contract awarded by Owner, plus (ii) 80% of the amount of the hard construction cost (labor and materials and general contractor's profit and overhead) portion of the amount of the total bid, including base bid and all alternates (which, if accepted, would increase the amount of the bid), submitted by the successful bidder receiving the award of the construction contract by Owner. The lump sum amount of the basic compensation shall be fixed upon the award of the general construction contract, and shall

not thereafter be altered by virtue of any increase or reduction of the amount payable under the general construction contract, whether by change order or otherwise."

e. Section 12 is revised to read as follows: "The project includes the following programmatic elements: one underground level of parking, to provide a total of approximately 258 parking spaces (possibly to be expanded by approximately 66 spaces if City/private construction financing can be secured); approximately 20,000 square feet of pad space which may be privately developed, or converted to parking space; a transit transfer mall with space for 22 buses and support spaces and services; gross building floor area measured at approximately 152,000 square feet in five stories; finished ground floor lobby spaces, transit support spaces, transit retail space, and a first-floor conference area; approximately 128,000 square feet of office space for Marion County and transit offices; a public plaza to be named "Mark O. Hatfield Plaza;" circumferential weather protection around building facades and across the transit mall entryways, incorporating a clock tower at one end of the transit mall; a drop-down, gated system of securing the transit mall area; and, streetscape improvements around the perimeter of the block."

8. Except as amended by this Agreement, all of the agreements, terms and conditions of the Interim Agreement shall remain in full force and effect.

ARCHITECT:

by [Signature]
title PRINCIPAL

MARION COUNTY BOARD OF COMMISSIONERS

[Signature] 7-15-98
[Signature]
[Signature]

SALEM AREA MASS TRANSIT DISTRICT

by [Signature]
title GENERAL MANAGER

APPROVED AS TO FORM:

[Signature]
County Legal Counsel
[Signature]
County Contracts Coordinator
[Signature]
Transit Legal Counsel

AIA CONTRACT



Standard Form of Agreement Between Owner and Architect

AIA Document B141 - Electronic Format

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES. CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION. AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401.

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AGREEMENT

made as of the ~~28th~~ day of ~~March~~ in the year of Nineteen Hundred and ~~Ninety-Seven~~ ^{Eight}

BETWEEN the Owner:

Salem Area Mass Transit District
3140 Del Webb Avenue NE
Salem, Oregon, 97303-4165

~~Marion County Department of General Services~~ ^{Board of Commissioners}
Marion County Courthouse, ~~Fifth Floor~~
100 High Street NE
Salem, Oregon, 97301

and the Architect:

(Name and address)

Arbuckle Costic Architects, Inc.
363 State Street
Salem, Oregon 97301-3533

For the following Project:

(Include detailed description of Project, location, address and scope.)

Courthouse Square consisting of the redevelopment of a city block bounded by High Street, Court Street, Church Street, and Chemeketa Street in Salem, Oregon. Refer to 12.1 for a more detailed description.

The Owner and Architect agree as set forth below.

JA

KA

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

1.1 ARCHITECT'S SERVICES

See SP 1.1.0

1.1.1 The Architect's services consist of those services performed by the Architect, Architect's employees and Architect's consultants as enumerated in Articles 2 and 3 of this Agreement and any other services included in Article 12.

1.1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. ~~Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.~~

See SP 1.1.2.1

1.3 The services covered by this Agreement are subject to the time limitations contained in Subparagraph 11.5.1.

See SP 1.1.4 - 1.1.7

ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

2.1.1 The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include ^{without limitation} normal structural, mechanical and electrical engineering services. ^{and other concept for engineering services not reasonably anticipated because of unexpected concealed conditions)}

2.2 SCHEMATIC DESIGN PHASE ^{necessary to produce a complete and accurate set of Construction Documents}

2.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1.

2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

See SP 2.2.4.1

~~2.2.5 The Architect shall submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or other unit costs.~~

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

See SP 2.3.1.1

~~2.3.2 The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.~~

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

See SP 2.4.1.1

2.4.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

~~2.4.3 The Architect shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.~~

2.4.4 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

See SP 2.4.5 - 2.4.6 - 2.4.7

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 The Architect, following the Owner's approval of the Construction Documents and of the latest ^{obtained} preliminary estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

See SP 2.5.2

2.6 CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates ~~at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work.~~

2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, unless otherwise provided in this Agreement.

2.6.3 Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect ~~with consent of the Contractor, which consent shall not be unreasonably withheld.~~

2.6.4 The Architect ~~shall be a representative of and~~ shall advise and consult with the Owner (1) during construction until final payment to the Contractor is due, and (2) as an Additional Service at the Owner's direction from time to time during the correction period described in the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

2.6.5 The Architect shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the Owner and Architect in writing to become ^{generally} familiar with the progress and quality of the Work completed and ~~to determine in general if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents.~~ However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check ^{in all material respects} quality or quantity of the Work. On the basis of on-site

observations as an architect, the Architect shall keep the Owner informed of the progress and quality of the Work, and shall ^{exercise reasonable care} endeavor to guard the Owner against defects and deficiencies in the Work. ~~(More extensive site representation may be agreed to as an Additional Service, as described in Paragraph 2.2.)~~

See SP 2.6.5.1

2.6.6 The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract for Construction. The Architect shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

2.6.7 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.8 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor ^{may} communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect.

See SP 2.6.8.1 - 2.6.8.2

at the site

2.6.9 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor.

2.6.10 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed

construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

^{the responsibility to advise the Owner}
2.6.11 The Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

See SP 2.6.11

2.6.12 The Architect shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, ^{for the purpose of} ~~determining whether or not the submittals conform to the Contract Documents in all material respects.~~ ^{the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.} The Architect's action shall be taken such reasonable promptness as to cause no delay in the Work or in the construction of the Owner or of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, ~~unless otherwise specifically stated by the Architect,~~ of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

2.6.13 The Architect shall prepare Change Orders and Construction Change Directives, with supporting

documentation and data if deemed necessary by the Architect as provided in Subparagraphs 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

2.6.14 The Architect shall conduct ^{observations} ~~inspections~~ to determine the date or dates of Substantial Completion and the date of final completion, shall receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

2.6.15 The Architect shall ^{initially} ~~interpret and~~ ^{make recommendations} ~~decide~~ matters concerning performance of the Owner and Contractor ^{and} ~~under~~ the requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

2.6.16 Interpretations and ^{recommendations} ~~decisions~~ of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and ^{recommendations} ~~initial decisions~~, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and ~~shall not be liable for results of interpretations or decisions so rendered in good faith.~~

2.6.17 The ^{Owner's} ~~Architect's~~ decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

2.6.18 The Architect shall render written ^{recommendations} ~~decisions~~ within a reasonable time on all claims, disputes or other matters in question between the Owner and Contractor relating to the execution or progress of the Work as provided in the Contract Documents.

2.6.19 The Architect's ^{recommendations} ~~decisions~~ on claims, disputes or other matters, including those in question between the Owner and Contractor, ~~except for those relating to aesthetic effect as provided in Subparagraph 2.6.17,~~ shall be subject to arbitration as provided in this Agreement and in the Contract Documents.

JW
KA

program or Project budget:

ARTICLE 3 ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. ~~If services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Paragraph 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.~~
See SP 3.1.1.1

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If more extensive representation at the site than is described in Subparagraph 2.6.5 is required, the Architect ~~shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.~~

~~3.2.2 Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as agreed by the Owner and Architect. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 current as of the date of this Agreement, unless otherwise agreed.~~

~~3.2.3 Through the observations by such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.~~

3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 Making revisions in Drawings, Specifications or other documents when such revisions are:

- which require significant time and material costs,*
- .1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's

- .2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or

- .3 due to changes required as a result of the Owner's failure to render decisions in a timely manner.
reasonably

3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5.

~~3.3.3 Preparing Drawings, Specifications and other documentation and supporting data evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives.
See SP 3.3.3~~

3.3.4 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

See SP 3.3.4.1

3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

3.3.6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

3.3.7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.

3.3.8 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Architect is party thereto.

3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

3.4 OPTIONAL ADDITIONAL SERVICES

~~3.4.1 Providing analyses of the Owner's needs and programming the requirements of the Project.~~

3.4.2 Providing financial feasibility or other special studies.

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3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites.

3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

3.4.5 Providing services relative to future facilities, systems and equipment.

~~3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.~~

3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner.

3.4.8 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

3.4.9 Providing services in connection with the work of a construction manager or separate consultants retained by the Owner.

3.4.10 Providing detailed estimates of Construction Cost.

3.4.11 Providing detailed quantity surveys or inventories of material, equipment and labor.

3.4.12 Providing analyses of owning and operating costs.

3.4.13 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

3.4.14 Providing services for planning tenant or rental spaces.

3.4.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

3.4.16 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

3.4.17 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation

during operation.

~~3.4.18 Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.~~

3.4.19 Providing services of consultants for other than architectural, structural, mechanical, electrical and other engineering portions of the Project provided as a part of Basic Services, ^{necessary to produce a complete and accurate set of construction documents for} as described in Section 2.1.1.

3.4.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 The Owner shall ^{consult with the Architect} ~~provide full information~~ regarding requirements for the Project, including ^{contemplated} ~~a program which shall set forth~~ the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

4.2 The Owner shall establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

~~4.3 If requested by the Architect, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.~~

4.4 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

4.5 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and

information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a project benchmark.

4.6 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

4.6.1 The Owner shall furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Architect.

4.7 The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

4.8 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require, to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

4.9 The services, information, surveys and reports required by Paragraphs 4.5 through 4.8 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

4.10 Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

See SP 4.10.1

4.11 The proposed language of certificates or certifications requested of the Architect or Architect's consultants shall be submitted to the Architect for review and approval at least 14 days prior to execution. The Owner shall not request certifications that would require knowledge or services beyond the scope of this Agreement.

ARTICLE 5 CONSTRUCTION COST

5.1 DEFINITION

5.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction.

5.1.3 Construction Cost does not include the compensation of the Architect and Architect's consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect.

5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount

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of an increase in the Contract Sum occurring after execution of the Contract for Construction.

5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

5.2.4 If a fixed limit of Construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

1. give written approval of an increase in such fixed limit;
2. authorize rebidding or renegotiating of the Project within a reasonable time;
3. if the Project is abandoned, terminate in accordance with Paragraph 8.3; or
4. cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

5.2.5 If the Owner chooses to proceed under Clause 4.4, the Architect, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of Contract Documents shall be the limit of the Architect's responsibility arising out of the establishment of a fixed limit. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

ARTICLE 6 USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

~~6.1 The Drawings, Specifications and other documents prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Architect's Drawings, Specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project. The Architect's Drawings,~~

~~Specifications or other documents shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, unless the Architect is adjudged to be in default under this Agreement, except by agreement in writing and with appropriate compensation to the Architect.~~
See SP 6.1 and 6.1.1

6.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Architect's reserved rights.

ARTICLE 7 ARBITRATION

~~7.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.~~

7.2 Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

7.3 No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

7.4 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

See SP 7.1, 7.2 and 7.3

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ARTICLE 8 TERMINATION, SUSPENSION OR ABANDONMENT

8.1 This Agreement may be terminated by either party upon not less than ^{ten} seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

See SP 8.1.1

8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.

See SP 8.2.1

~~8.3 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Architect may terminate this Agreement by giving written notice.~~

See SP 8.3

8.4 Failure of the Owner to make payments to the Architect in accordance with this Agreement, shall be considered substantial nonperformance and ^{after seven days written notice} cause for termination.

8.5 If the Owner fails to make ^{not in dispute} payment when due the Architect for services and expenses, the Architect may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

See SP 8.5.1

~~8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph 8.7.~~

8.7 Termination Expenses are in addition to compensation for Basic and Additional Services, and include expenses which are directly attributable to termination. Termination Expenses shall be computed as a percentage of ~~the total compensation for Basic Services and Additional~~

~~Services earned to the time of termination, as follows:~~

- ~~1 Twenty percent of the total compensation for Basic and Additional Services earned to date if termination occurs before or during the predesign, site analysis, or Schematic Design Phases; or~~
- ~~2 Ten percent of the total compensation for Basic and Additional Services earned to date if termination occurs during the Design Development Phase; or~~
- ~~3 Five percent of the total compensation for Basic and Additional Services earned to date if termination occurs during any subsequent phase.~~

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the Architect.
State of Oregon.

9.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

~~9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion.~~

9.4 The Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner and Architect each shall require similar waivers from their contractors, ~~consultants and agents.~~

9.5 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to their partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Architect shall assign this Agreement without the written consent of the other.

9.6 This Agreement represents the entire and integrated agreement between the Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

9.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

9.8 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

9.9 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The owner shall provide professional credit for the Architect on the construction sign and in the promotional materials for the Project.

ARTICLE 10 PAYMENTS TO THE ARCHITECT

~~10.1 DIRECT PERSONNEL EXPENSE~~

~~10.1.1 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.~~

10.2 REIMBURSABLE EXPENSES

10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project, as identified in the following Clauses.

~~10.2.1.1 Expense of transportation in connection with the Project;~~ ^{Reasonable} Expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project.

10.2.1.2 ^{Reasonable} Expense of reproductions, postage and handling of Drawings, Specifications and other documents.

10.2.1.3 ^{Reasonable} If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

10.2.1.4 Expense of renderings, models and mock-ups requested by the Owner.

10.2.1.5 Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the Architect and Architect's consultants.

~~10.2.1.6 Expense of computer-aided design and drafting equipment time when used in connection with the Project.~~

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

~~10.3.1 An initial payment as set forth in Paragraph 11.1 is the minimum payment under this Agreement.~~
See SP 10.3.1

10.3.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 11.2.2.

10.3.3 If and to the extent that the time initially established in Subparagraph 11.5.1 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Subparagraph 11.3.2.

~~10.3.4 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Subparagraph 11.2.2, based on (1) the~~

~~lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.~~

10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

10.4.1 Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

10.5 PAYMENTS WITHHELD

10.5.1 No deductions shall be made from the Architect's

compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been found to be liable.

10.6 ARCHITECT'S ACCOUNTING RECORDS

10.6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 11 BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

11.1 AN INITIAL PAYMENT of n/a Dollars (\$ n/a) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

11.2 BASIC COMPENSATION

11.2.1 FOR BASIC SERVICES, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows: (Insert basis of compensation, including stipulated sums, multiples or percentages, and identify phases to which particular methods of compensation apply, if necessary.)

~~E services is a stipulated sum of One Million Five Hundred Eighty Eight Thousand Seven Hundred Thirty and No/100 Dollars (\$1,588,730.00).~~

11.2.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable: (Insert additional phases as appropriate.)

Schematic Design Phase:	Fifteen percent (15 %)
Design Development Phase:	Twenty percent (20 %)
Construction Documents Phase:	Forty percent (40 %)
Bidding or Negotiation Phase:	Five percent (5 %)
Construction Phase:	Twenty percent (20 %)
Total Basic Compensation	one hundred percent(100%)

11.3 COMPENSATION FOR ADDITIONAL SERVICES

11.3.1 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as described in Paragraph 3.2, compensation shall be computed as follows:

Principal	\$90/hour
Senior Architect	\$90/hour
Project Architect	\$70/hour
Architect	\$60/hour
Drafter	\$50/hour
Interior Designer	\$50/hour
Clerical	\$35/hour

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11.3.2 FOR ADDITIONAL SERVICES OF THE ARCHITECT, as described in Articles 3 and 12, other than ~~(1) Additional Project Representation, as described in Paragraph 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:~~

In basis of compensation, including rates and/or multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)

Principal	\$90/hour
Senior Architect	\$90/hour
Project Architect	\$70/hour
Architect	\$60/hour
Drafter	\$50/hour
Interior Designer	\$50/hour
Clerical	\$35/hour

1.3.3 FOR ADDITIONAL SERVICES OF CONSULTANTS, including additional structural, mechanical and electrical engineering services and those provided under Subparagraph 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of one point one (1.1) times the amounts billed to the Architect for such services.

(Identify specific types of consultants in Article 1.2, if required.)

1.4 REIMBURSABLE EXPENSES

1.4.1 FOR REIMBURSABLE EXPENSES, as described in Paragraph 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of one point one (1.1) times the expenses incurred by the Architect, the Architect's employees and consultants in the interest of the Project.

1.5 ADDITIONAL PROVISIONS

1.5.1 IF THE BASIC SERVICES covered by this Agreement have not been completed within thirty (30) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Subparagraphs 10.3.3 and 11.3.2.

See SP 11.5.1.1 ^{thirty 30} Payments are due and payable ^{receipt of} fifteen (15) days from the date of the Architect's invoice. Amounts unpaid thirty (30) days after the ^{receipt of} invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of interest agreed upon.)

Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

1.5.3 The rates and multiples set forth for Additional Services shall be annually adjusted in accordance with normal salary review practices of the Architect.

ARTICLE 12
OTHER CONDITIONS OR SERVICES

In descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

12.1 Detailed Project Description: ~~The project includes the following programmatic elements: Two underground~~
~~evels of parking to provide a total of approximately 363 parking spaces; A transit transfer mall with space for 22 buses~~
~~and support spaces and services; Gross floor area measured at approximately 178,000 square feet in four-stories~~
~~designed as open "shell" space for offices and retail functions; Finished ground floor lobby spaces, transit support~~
~~spaces, a fourth floor conference area and approximately 61,000 square feet of office space for Marion County; A public~~
~~plaza to be named "Mark O. Hatfield Plaza"; and Streetscape improvements around the perimeter of the block.~~

This Agreement also includes the attached documents³, which are hereby incorporated by reference

1. Supplemental Provisions
- ~~2. Exhibit A: Project Schedule~~
3. FTA Contract Addendum

See SP 12.³₂ -- 12.^{4.1}₁₃

This Agreement entered into as of the day and year first written above.

OWNER

MARION COUNTY BOARD OF
COMMISSIONERS

Mary Pearson 7-15-98
Chair

Randall Franke
Commissioner

[Signature]
Commissioner

SALEM AREA MASS TRANSIT
DISTRICT

[Signature]
GENERAL MGR

ARCHITECT

[Signature]
(Signature)

Kim Arbuckle, President
(Printed name and title)

[Signature]
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**SUPPLEMENTAL PROVISIONS TO
THE AIA CONTRACT**

SUPPLEMENTAL PROVISIONS

The following supplements modify, change, delete from or add to AIA Document B141, Standard Form of Agreement Between Owner and Architect (1987 Edition). Where any Article, Paragraph, Subparagraph or Clause of the B141 form is modified, changed, deleted from or added to by these Supplemental Provisions, the unaltered provisions of that Article, Paragraph, Subparagraph or Clause shall remain in effect. Where any part of the B 141 form is in conflict with these Supplemental Provisions, these Supplemental Provisions shall govern. Where any part of the B141 form or these Supplemental Provisions are in conflict with the FTA Addendum, the FTA contract requirements shall govern.

1.1.0 The Owner and Architect acknowledge and agree that the Architect commenced performing design services for this Project in June 1996, on behalf of the Owner. The parties agree that this Agreement relates back to the time of commencement of the Architect's services for this Project.

1.1.2.1 The Architect shall provide to the best of its ability services under this Agreement in conformance with the detailed schedule for the Architect's services prepared by the Architect and approved by the Owner pursuant to Subparagraph 1.1.2.

1.1.4 The Architect warrants that it is licensed to perform architectural services in the state of Oregon and that it or the parties or persons that perform engineering services under this Agreement are licensed to perform engineering services in the state of Oregon.

1.1.5 The Architect and its consultants shall perform all services under this Agreement in a manner consistent with the degree of care and skill ordinarily and customarily exercised by members of the same profession currently practicing under similar circumstances.

1.1.6 The Architect and its consultants shall comply with applicable federal, state, and local laws, statutes, codes, rules, regulations, and orders in performing the Architect's obligations under this Agreement.

1.1.7 The Owner reserves the right to enter into additional agreements with third parties to perform architectural and engineering services related to the Project. The Owner further reserves the right to terminate certain of the Architect's obligations under this Agreement and to perform such obligations itself or to enter into agreements with third parties to perform such obligations. In the event the Owner terminates certain of the Architect's obligations pursuant to this Subparagraph, the Architect's compensation under this Agreement shall be equitably adjusted.

2.2.4.1 The Schematic Design Documents shall comply with applicable laws, statutes, ordinances, codes, orders, rules and regulations.

2.3.1.1 The Design Development Documents shall comply with applicable laws, statutes, ordinances, codes, orders, rules and regulations.

2.4.1.1 The Construction Documents shall comply with applicable laws, statutes, ordinances, codes, orders, rules and regulations.

2.4.5 Unless directed by the Owner otherwise, the Architect shall also prepare the final Drawings on computer-aided design disks.

2.4.6 The Owner's review and approval of the Schematic Design Documents, the Design Development Documents and the Drawings and Specifications (both preliminary and final) during the Schematic Design Phase, Design Development Phase or Construction Documents Phase, or at any other time, shall not relieve the Architect of its responsibilities for the final Drawings and Specifications.

2.4.7 The Architect will work cooperatively with the Owner and Owner's consultants to develop a design based on the Contractor's cost estimates, taking into account Owner's budget constraints.

2.5.2 The Architect acknowledges the importance to the Owner of the Owners project schedule, and the Architect agrees to put forth reasonable efforts to perform services under this Agreement in accordance with the project schedule. However, the Owner understands that the Architect's performance must be governed by sound professional practices.

2.6.5.1 The Owner's approval, acceptance, use of or payment for all or any part of the architect's services hereunder or of the Project itself shall in no way alter the Architect's obligations or the Owner's rights hereunder.

2.6.8.1 The Architect shall copy the Owner on all correspondence to the Contractor.

2.6.8.2 The Owner shall designate an individual as Owner's Representative during the course of the Project. The Owner's Representative may communicate directly with the Contractor, but shall provide copies of all written communications to the Architect.

2.6.11 .1 Prior to requiring any additional inspection or testing under Subparagraph 2.6.11, the Architect shall consult with and obtain the approval of the Owner regarding the need for and the nature and cost of such services and the Architect's recommendations of parties or persons to perform such services.

3.1.1.1 Notwithstanding anything to the contrary in this Agreement, Owner shall not be responsible to pay the Architect and the Architect shall not be entitled to receive compensation for any Contingent Additional Services, if such services were required due to the negligence, breach or other errors or omissions of the Architect, its consultants or any other party or person performing the Architect's obligations under this Agreement.

3.3.3 Preparing Drawings, Specifications and other documents and supporting data, evaluating Contractor's proposals, and providing other services, but only to the extent the same are required in connection with Change Orders and Construction Change Directives and only if such services are not due to the negligence, breach or other errors or omissions of the Architect, its consultants or any other party or person performing the Architect's obligations under this Agreement.

3.3.4.1 Services described in Section 3.3.4 shall be Contingent Additional Services to the extent that they require significant time and impose material costs on Architect.

3.4.9 Providing services in connection with the work of Owner's separate consultants, other than the Construction Manager retained by Owner.

4.10.1 However, failure of Owner to give notice required under Section 4.10 shall not relieve Architect of any of its obligations under this Agreement.

6.1 The Owner acknowledges the Architect's Construction Documents as instruments of professional service. Nevertheless, the plans, drawings and specifications prepared under this Agreement are and shall remain the property of the Owner. The Architect may retain copies, including reproducible copies, of the drawings, specifications and plans for information and reference in connection with the Owner's use and occupancy of the Project. The Architect may make fair use of the drawings, specifications and plans on other projects. The Architect may use renderings or photographs of the Project for promotional purposes.

The Owner agrees to retain the drawings, specifications and plans, and not permit said documents to be used by any other party. To the extent permitted by law, the Owner may use said drawings, specifications and plans for the purposes of remodelling, expanding, altering or repairing the Project or portions of the Project in the future. The Owner assumes all responsibility for any use of the drawings, specifications and plans, and the

Architect expressly waives any right to compensation, in any form, for the Owner's use of said intellectual or physical materials, including the drawings, specifications and plans. The Architect further expressly waives any copyright, patent (statutory or common law), or any other rights to the drawings, specifications or plans set forth in this Agreement, including any artistic or intellectual infringement or property right claims now existing or hereafter acquired.

6.1.1 The Architect shall cause its consultants, and other parties and persons performing services under this Agreement that have or reasonably may have a copyright in the Drawings, Specifications, other documents or work prepared under this Agreement, or the Work as constructed pursuant to such documents or work, to waive any such copyright, as to the Owner, pursuant to Paragraph 6.1.

7.1 If any dispute or difference shall arise between the Architect and Owner with respect to any matter or thing arising out of, or in any way relating to this Agreement, both parties are encouraged to resolve that dispute through mediation using the then effective mediation rules of Arbitration Service of Portland, Inc.

7.2 If any dispute or difference which concerns a claim of \$30,000 or less shall arise between the Architect and Owner with respect to any matter or thing arising out of, or in any way relating to this Agreement, each party, at such party's option, shall have the right to require that such claim, controversy or dispute between the parties arising out of or relating to the agreement be determined by arbitration in accordance with the then effective arbitration rules of Arbitration Services of Portland, Inc., and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. If litigation has been commenced in court for the purpose of protecting any right of that party, the arbitration provision is not waived except when:

- 1) the party who is the defendant or respondent in such litigation shall be deemed to have waived its option to arbitrate said dispute if such party files a general appearance in the litigation prior to filing a claim in arbitration in the matter specified above; and
- 2) the plaintiff or petitioner in such litigation will be deemed to have waived its right to arbitrate said dispute if such party fails to file a claim for arbitration in the manner specified above within sixty (60) days after a general appearance in the litigation has been filed by the party who is the defendant or respondent in the litigation.

If either party properly exercises its option to arbitration, arbitration of such dispute shall be mandatory and any pending litigation shall be stayed.

The award of the arbitrators shall be in writing. The Architect or the Owner shall have all rights arising under Oregon law regarding any arbitration award under this Agreement.

7.3 In addition to Paragraph 7.2, the Architect and Owner agree to join in one arbitration all persons or parties with claims relating to or arising out of the same transaction, occurrence, or series of transaction or occurrences as the dispute between the Owner and Architect, if there is a common question of law or fact.

8.1.1 In the event this Agreement is terminated due to the fault or convenience of the Owner, the Architect shall be entitled to receive compensation for the portion of his fee then earned and all substantiated Reimbursable Expenses incurred as of the date of termination, together with an additional amount equal to 1/10th of the amount he would otherwise be entitled to receive in equitable consideration of a reasonable profit and overhead attributable to the services already performed.

8.2.1 Upon such resumption, the Architect shall promptly recommence performing its obligations under this Agreement.

8.3 This Agreement may be terminated by the Owner at any time, without cause and for its convenience, upon written notice to the Architect.

8.5.1 In the event of any dispute concerning payment for services and expenses, the Owner shall pay any undisputed amount due as provided by this Agreement. Architect shall continue to perform services required under this Agreement pending the resolution of any dispute. Any disputed amount withheld by the Owner, which is subsequently paid to the Architect, shall bear interest at the statutory rate from the date payment was due until paid.

10.3.1 The Owner and Architect acknowledge and agree that as of June 1, 1998, the Owner has paid the Architect sums totaling five hundred twenty six thousand two hundred sixty one dollars and ninety four cents (\$526,261.94), which amount is comprised of one hundred eighty thousand four hundred twenty one dollars (\$180,421) paid as partial payment of the amount to be paid for Basic Compensation under Paragraph 11.2, and nine thousand six hundred twenty four dollars and fifty five cents (\$9,624.55) paid as Reimbursable Expenses under Subparagraph 11.4.1 which were incurred prior to the date of execution of this Agreement.

11.5.1.1 In the event that basic services are not completed within the time set forth in Subparagraph 11.5.1 because the Owner is delayed in the performance of any of its obligations as a result of strikes, lockouts, wars, unavailability of materials, floods, unusual weather conditions, government regulations and acts, or other causes beyond the reasonable control of the Owner, then the time for the performance of any obligation under this Agreement so delayed shall be extended for the period of such delay without the payment of additional compensation.

12.3 INSURANCE

12.3.1 The Architect shall obtain, at its own expense, the following insurance coverages. The coverage herein required shall not in any way limit the liability of the Architect. The Architect's failure to maintain coverages as required shall be a breach of this Agreement entitling the Owner to withhold payments otherwise due to the Architect.

1. Comprehensive or Commercial Form General Liability Insurance (contractual liability included) with limits as follows:

A. Each Occurrence	\$1,000,000
B. Products/Completed Operations Aggregate	\$2,000,000
C. Personal and Advertising Injury	\$1,000,000
D. General Aggregate (not applicable to comprehensive Form)	\$2,000,000

If this insurance is written on a claims-made form, coverage shall survive for a period of not less than three (3) years following Final Completion of this Project or termination of this Agreement. Coverage shall also provide for a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

2. Automobile Liability Insurance for owned, non-owned or hired automobiles with a combined single limit of no less than \$1,000,000 per occurrence.

3. Workers' Compensation at the statutory limit and Employers' Liability with limits reasonably acceptable to Owner.

4. Professional Liability Insurance, including contractual liability, with limits no less than \$3,000,000 per claim and \$3,000,000 annual aggregate limit applying. If such insurance is written on a claims-made form, coverage shall survive for a period of not less than three (3) years following Final Completion of this Project or termination of this Agreement, if such insurance coverage is reasonably available. Coverage shall also provide for a retroactive date of placement prior to or coinciding with the date the Architect commenced services for this Project. The Architect shall notify the Owner of any claim which may reduce the level of coverage by half.

12.3.2 Insurance policy forms and amounts of deductibles shall be acceptable to the Owner. Policies shall be endorsed to comply with the following requirements and, upon execution of this Agreement, the Architect shall furnish the Owner with certificates which evidence compliance with the following requirements. Policies shall:

1. Provide for thirty (30) days' advance written notice to the Owner of cancellation of coverage.
2. Include the Owner and its elected officials, officers and employees as additional insureds with respect to Paragraphs 12.3.1(1) (General Liability Insurance) and 12.3.1(2) (Automobile Liability Insurance).
3. Be written by insurance companies which are authorized to conduct business in the state of Oregon, and which have a policyholder's rating of not less than A VII in the most current edition of Best's Rating Guide.
4. Include Severability of Interest and Cross Liability clauses.

12.4 LIENS

The Architect shall comply with applicable public contract laws concerning liens, including but not limited to ORS 279.3 12, the Miller Act and the little Miller Act.

12.5 NONDISCRIMINATION

12.5.1 The Architect and the Architect's consultants shall not discriminate against any applicant for employment or employee on the basis of race, religion, color, gender, sexual orientations, national origin, age or disability. The Architect shall take affirmative actions to ensure that applicants for employment and employees are treated without regard to their race, religion, color, gender, sexual orientation, national origin, age or disability. Such action shall relate to, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Architect agrees to post in conspicuous places, available to its applicants for employment and employees, notices setting forth its policies of nondiscrimination. The Architect and the Architect's consultants shall, in all solicitations or advertisements for employees placed by the Architect or the Architect's consultants or on their behalf, state that all qualified applicants will receive consideration for employment without regard to their race, religion, color, gender, sexual orientations, national origin, age or disability.

12.6 NOTICE

12.6.1 Unless specifically stated otherwise in this Agreement, all notices to be provided under this Agreement shall be personally delivered, sent by first-class mail postage prepaid, or transmitted by telecopy, to the following addresses or telecopy numbers:

1. If to the Owner:

Billy Wasson, Project Coordinator
Marion County, Oregon
Marion County Courthouse, Fifth Floor
100 High Street NE
Salem, Oregon, 97301
Telephone No: 588-5455
Telecopy No: 588-5495

AND
John Whittington, Project Coordinator
Salem Area Mass Transit District
3140 Del Webb Avenue NE
Salem, Oregon, 97303-4165
Telephone No: 588-2424
Telecopy No: 588-0209

With a copy to:

Michael J. Hansen
County Counsel
The Equitable Center, Suite 312
530 Center Street NE
Salem, Oregon, 97301

Telephone No: 588-5220
Telecopy No: 373-4367

AND
Ben C. Fetherston Jr.
Attorney at Law
880 Liberty St. NE
P.O. Box 2206
Salem, Oregon 97308

Telephone No: 581-1542
Telecopy No: 585-3978

2. If to the Architect:

Alan E. Costic
Arbuckle Costic Architects, Inc.
363 State Street
Salem, Oregon, 97301-3655

Telephone No: 581-4114
Telecopy No: 581-3655

With a copy to:
Gina A. Johnnie
Sherman, Sherman & Murch
687 Court Street NE
PO Box 2247
Salem, Oregon 97308-2247

Telephone No: 364-2281
Telecopy No: 370-4308

3. If to the Contractor:

Telephone No:
Telecopy No:

With a copy to:

Telephone No:
Telecopy No:

Either party to this Agreement at any time may change the individuals, addresses or telecopy numbers set out in this Paragraph 12.6 for purposes of receiving notices, by providing written notice of such change to the other party and the Contractor in the manner provided for giving notice under this Paragraph 12.6. A notice under this Paragraph 12.6 shall be deemed given when delivered if personally delivered, three days after postmarked if sent by mail, or when telecopied if telecopied.

12.7 FORUM

Any arbitration or court proceeding arising out of this Agreement or the Architect's services related to this Project shall be commenced and conducted in Salem, Marion County, Oregon.

12.8 ATTORNEY'S FEES

In case litigation is instituted, including any bankruptcy or arbitration proceeding, arising directly or indirectly, out of this Agreement, the losing party shall pay to the prevailing party, its reasonable attorney fees, together with all expenses, which may reasonably be incurred in taking such action, including, but not limited to, costs incurred in searching records, expert witness fees, and anticipated post judgment collection services. If an appeal is taken from any judgment or decree of the trial court or arbitration, the losing party shall pay the prevailing party in the appeal its reasonable attorney fees in such appeal. The attorney fees shall be paid in addition to all other sums and costs provided by law.

12.9 NO PROVISION

12.10 INDEPENDENT CONTRACTOR

The Architect is an independent contractor. The Architect is solely responsible for payment of any and all federal and state taxes and assessments of whatever kind, including but not limited to social security, unemployment compensation, workers' compensation, and taxes, applicable to itself and its officers, agents and employees. The Architect will obtain and maintain at all times during the term of this contract workers' compensation insurance covering its employees and agents while carrying out duties under this Agreement.

12.11 PUBLIC CONTRACT LAWS

The Architect agrees to comply with the terms of ORS 279.310 through 279.316 and 279.320, which shall be deemed incorporated herein by reference.

12.12. FTA FUNDING

This Project is financed, in part, through a grant from the Federal Transit Administration to the transit district. The total amount of federal funds to be expended for compensation payable to the Architect under this Agreement is estimated to be four hundred seven thousand three hundred fourteen dollars (\$407,314), which is 28.9% of the total compensation payable. As a consequence of the federal participation in this Project, federal requirements are applicable to this Project. The federal requirements are attached as an Addendum to this Agreement, and the Architect agrees that, in connection with work on this Project contemplated by this Agreement, the Architect will comply with the federal requirements in the Addendum. The CERTIFICATION REGARDING LOBBYING must be executed before this Agreement is considered a valid and binding agreement.

12.13. SAVINGS CLAUSE

12.13.1 Should any provision of this Agreement, at any time, be in conflict with any law, rule, regulation or order, or be unenforceable for any reason, then such provision shall continue in effect only to the extent that it remains valid. In the event any provision of this Agreement becomes less than fully operative, the remaining provisions of this Agreement shall nevertheless remain in full force and effect.

12.14 SINGULAR/PLURAL AND PRONOUNS

12.14.1 Feminine or neuter pronouns shall be substituted for those of masculine form or vice versa, and the plural shall be substituted for the single number or vice versa in any place in which the context may require such substitution.

LETTER OF AGREEMENT

SALEM AREA TRANSIT

3140 Del Webb Avenue NE
Salem, OR 97303-4165

503-588-2424 Fax 588-0209
E-mail: cherriots.org

May 21, 1998

Contract to be signed



Cherriots

LETTER OF AGREEMENT

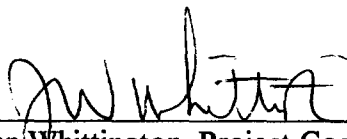
RE: Definition of terms, Courthouse Square contract between Salem Transit District,
Marion County, and Arbuckle Costic Architects

The contract documents between the District, the County, and the project architect state that payment to the architect shall be "not more than 6% of hard costs." Hard costs are further defined, within the documents, as "hard construction cost (labor and materials and general contractor's overhead and profit)."

In the parlance of the Federal Transit Administration, the hard cost as defined within the District/Architect contract documents is more commonly referred to as "price."

For the purposes of the District's agreement with the architect, and in all subsequent dealings on the Courthouse Square project between the District, the architect, and the Federal Transit Administration, the parties agree the project's "price," the project's "hard costs" and "hard construction cost," shall have the same meaning and effect, to wit: the general contractor's labor, materials, overhead, and profit.

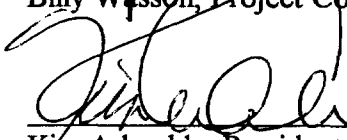
FOR THE DISTRICT:


John Whittington, Project Coordinator

FOR MARION COUNTY:


Billy Wasson, Project Coordinator

FOR ARBUCKLE COSTIC ARCHITECTS:


Kim Arbuckle, President

FEDERAL CONTRACT REQUIREMENTS

**Addendum to Contract
FTA Contract Requirements**

1. In connection with the performance by Contractor of work or services within the scope of this Agreement, Contractor agrees to comply with the following requirements, and to include these requirements in all subcontracts¹ of every tier:

No Obligation by the Federal Government. - (1) The Recipient² and Contractor³ acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

¹ The term "subcontract" under this addendum is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this section if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor."

² The term, "Recipient" shall mean the Salem Area Mass Transit District.

³ The term, "Contractor" shall refer to a party under any agreement undertaking contractual obligations to or for the benefit of one or more other parties which includes the Salem Area Mass Transit District.

Incorporation of Federal Transit Administration (FTA) Terms - The provisions of this Addendum include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Recipient requests which would cause Recipient to be in violation of the FTA terms and conditions.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (3) dated October 1, 1996) between Recipient and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Fly America - The Contractor agrees that, in connection with performing its obligations under this contract, it will use air transportation provided by United States-Flag air carriers for air transportation of persons or property, to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, in accordance with U.S. GAO regulations in 4 CFR Part 52 and U.S. GAO Guidelines for Implementation of the Fly America Act, B-138942 (1981).

Cargo Preference - Use of United States-Flag Vessels - The Contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to Recipient (through the Contractor in the case of a subcontractor's bill-of-lading.)

Energy Conservation - The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Recovered Materials - The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Civil Rights - The following requirements apply:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Disadvantaged Business Enterprise Provision

1. The Federal Fiscal Year goal has been set by Recipient in an attempt to match projected procurements with available qualified disadvantaged businesses. Recipient goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by Recipient as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific DBE goal is assigned to this contract, it will be clearly stated and if the Contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBE's in the work provided, Recipient may declare the Contractor noncomplaint and in breach of contract.

(a) Policy - It is the policy of the Department of Transportation and Recipient that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 and Section 106(c) of the STURAA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum

opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of Recipient to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of Recipient procurement activities are encouraged.

(b) DBE obligation - The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

(c) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, Recipient may declare the Contractor noncompliant and in breach of contract.

(d) The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with Recipient DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of Recipient and will be submitted to Recipient upon request.

(e) Recipient will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- * Identification of qualified DBE
- * Available listing of Minority Assistance Agencies
- * Holding bid conferences to emphasize requirements

2. DBE Program Definitions, as used in the contract:

(a) Disadvantaged business "means a small business concern":

i. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

ii. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

or

iii. Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and

iv. Whose management and daily business operations are controlled by one or more women individuals who own it.

(b) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B - (Section 106(c)) Determinations of Business Size.

(c) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;

ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

iv. "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

v. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

Patents, Data and Copyright -

General. If any invention, improvement, or discovery of the Recipient or any of its third party contractors is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report.

Federal Rights. Unless the Federal Government later makes a contrary determination in writing, the rights and responsibilities of the Recipient, third party contractor, subrecipient and the Federal Government pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, including any waiver thereof. Unless the Federal Government later makes a contrary determination in writing, the Recipient agrees that, irrespective of its status or the status of any subrecipient or any third party contractor at any tier (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Recipient agrees it will transmit to FTA those rights due the Federal Government in any invention resulting from that third party contract described in U.S. Department of Commerce Regulations, "Rights to Grants, Contracts and Cooperative Agreements." 37 C.F.R. Part 401.

Definition. The term "subject data" used in this section means records information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information used for Project administration.

Federal Restrictions. The following restrictions apply to all data first produced in the performance of the Grant Agreement or Cooperative Agreement: Except for its own use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public.

Federal Rights in Data and Copyrights. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the "subject data" described in the following subsections of this Agreement. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to other parties.

Any subject data developed under the Grant Agreement or Cooperative Agreement, or under a third party contract or subagreement financed by the Grant Agreement or Cooperative Agreement, whether or not a copyright has been obtained; and

Any rights of copyright to which a Recipient, subrecipient, or a third party contractor purchases ownership with Federal assistance.

Special Federal Rights for Planning, Research, and Development Projects. FTA's purpose in providing financial assistance for a planning, research, development, or a demonstration Project, is to increase transportation knowledge, rather than limit the benefits of the Project to participants in the Project. Therefore, unless FTA determines otherwise, the Recipient of FTA financial assistance to support a planning, research, development, or a demonstration Project agrees that, in addition to the rights in data and copyrights described in this Agreement, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project, which is the subject of the Grant Agreement or Cooperative Agreement, is not completed for any reason whatsoever, all data developed under that Project shall become subject data as defined in this Agreement and shall be delivered as the Federal Government may direct. This paragraph of this Agreement, however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use whose costs are financed with Federal transportation funds for capital projects.

Hold Harmless. Unless prohibited by state law, upon request by the Federal Government, the Recipient agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of employees or agents of the Federal Government.

Restrictions on Access to Patent Rights. Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

Interest of Congress - No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom. 41 U.S.C. 22.

Prohibited Interest - No member, officer or employee of Recipient or of a local public body during his or her tenure or one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

2. In connection with the performance by Contractor of work or services within the scope of this Agreement, Contractor agrees to comply with the following requirements, and to include these requirements in all subcontracts exceeding \$100,000 in value of every tier. Contractor further agrees to include the Contract Work Hours and Safety Standards Act requirements in all subcontracts exceeding \$2,500 in value (but not including subcontracts for the purchase of supplies, materials or articles ordinarily available on the open market):

**Contract Work Hours and Safety Standards Act
Pursuant to Section 102 (Overtime):**

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The Recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(Section 102 nonconstruction contracts should also have the following provision:)

(5) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B)

of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

Section 107 (OSHA):

Contract Work Hours and Safety Standards Act - The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, "Safety and Health Regulations for Construction" 29 C.F.R. Part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

Clean Air - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Recipient and understands and agrees that the Recipient will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

Clean Water - The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq . The Contractor agrees to report each violation to the Recipient and understands and agrees that the Recipient will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

1. By signing and submitting this Contract, the Contractor is providing the signed certification set out below .
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, Recipient may pursue available remedies, including suspension and/or debarment.
3. The Contractor shall provide immediate written notice to Recipient if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. Contractor may contact Recipient for assistance in obtaining a copy of those regulations.
5. The Contractor agrees by submitting this proposal or entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered

transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Recipient.

6. The Contractor further agrees by submitting this proposal or entering into this Contract that it will include the clauses 10 and 11, below, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealing.

9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, Recipient may pursue available remedies including suspension and/or debarment.

10. The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

11. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]

49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413

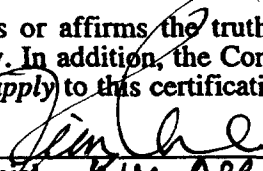
(1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official 
Name and Title of Contractor's Authorized Official KIM ARSVOLL, PRES.
Date 8/25/96

Buy America (construction and manufactured products)

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____
Signature _____
Company Name _____
Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____
Signature _____
Company Name _____
Title _____

Seismic Safety - The Contractor agrees that any new building or addition to an existing building will be designed and, subject to the scope of Contractor's obligations under Section 2.6.5, constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

Bid Bond Requirements (IFB for Construction Contracts)

(a) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to Recipient and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by Recipient to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of Recipient.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within ninety (90) days after the bid opening without the written consent of Recipient, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of Recipient's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by Recipient) shall prove inadequate to fully recompense Recipient for the damages occasioned by default, then the undersigned bidder agrees to indemnify Recipient and pay over to Recipient the difference between the bid security and Recipient's total damages, so as to make Recipient whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction Contracts)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Recipient determines that a lesser amount would be adequate for the protection of the Recipient.
2. The Recipient may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The Recipient may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

- (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the Recipient may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction Contracts)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the Recipient's interest. If the Recipient requires such bonding after execution of the Contract, then Recipient will pay the reasonable cost of the bond premium.

(a) The following situations may warrant a performance bond:

1. Recipient property or funds are to be provided to the Contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).
2. A contractor sells assets to or merges with another concern, and the Recipient, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the Recipient determines that a lesser amount would be adequate for the protection of the Recipient.
2. The Recipient may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract

price. The Recipient may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Recipient's interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million;

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The Recipient shall determine the amount of the advance payment bond necessary to protect the Recipient. If the Recipient requires such bonding after execution of the Contract, then Recipient will pay the reasonable cost of the bond premium.

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The Recipient shall determine the amount of the patent indemnity to protect the Recipient. If the Recipient requires such bonding after execution of the Contract, then Recipient will pay the reasonable cost of the bond premium.

Warranty of the Work and Maintenance Bonds (Construction Contracts)

1. The Contractor warrants to Recipient, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by Recipient, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the Recipient, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by Recipient and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to Recipient. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to Recipient written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

Davis-Bacon Act

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iii) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(iv)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(iv) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The Recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Recipient may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is

not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be

responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Record Retention/Access to Records - The Contractor agrees that it will maintain all data, documents, reports, records, contracts, and supporting materials relating to this Contract and the performance of its obligations under this Contract. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Recipient, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11). Contractor agrees to provide the Recipient, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. The Contractor agree to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

3. In connection with the performance by Contractor of work or services within the scope of this Agreement, Contractor agrees to comply with the following provisions, which need not be included in subcontracts:

Termination

a. Termination for Convenience (General Provision) The Recipient may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work

performed up to the time of termination. The Contractor shall promptly submit its termination claim to Recipient to be paid the Contractor. If the Contractor has any property in its possession belonging to the Recipient, the Contractor will account for the same, and dispose of it in the manner the Recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Recipient that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Recipient, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) The Recipient in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within 30 days after receipt by Contractor or written notice from Recipient setting forth the nature of said breach or default, Recipient shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Recipient from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that Recipient elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Recipient shall not limit Recipient's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional Service Contracts) The Recipient, by written notice, may terminate this contract, in whole or in part, when it is in the government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Recipient may terminate this contract for default. The Recipient shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

g. Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Recipient may terminate this contract for default. The Recipient shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Recipient goods, the Contractor shall, upon direction of the Recipient, protect and preserve the goods until surrendered to the Recipient or its agent. The Contractor and Recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

h. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the Recipient may terminate this contract for default. The Recipient shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Recipient resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the Contractor, within 4 days from the beginning of any delay, notifies the Recipient in writing of the causes of delay. If in the judgment of the Recipient, the delay is excusable, the time for completing the work shall be extended. The judgment of the Recipient shall be final and conclusive on the parties.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) The Recipient may terminate this contract in whole or in part, for the Recipient's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Recipient shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Recipient, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Recipient may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. Termination for Convenience or Default (Cost-Type Contracts) The Recipient may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of the Recipient or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Recipient, or property supplied to the Contractor by the Recipient. If the termination is for default, the Recipient may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Recipient and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the Recipient, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the Recipient determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the Contractor, the Recipient, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Dispute Resolution

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Recipient's Contract Officer. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision. In the event that the decision of the General Manager is contrary to law or violates the terms of the Contract, Contractor may pursue such remedy or relief as may be available for breach of Contract.

Performance During Dispute - Unless otherwise directed by Recipient, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Recipient and the Contractor arising out of or relating to this

agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Recipient is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Recipient, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Indemnity - The Contractor shall, to the extent permitted by law:

Protect, indemnify and save the Recipient and its officers, employees and agents, including consultants, harmless from and against any and all liabilities, damages, claims, demands, liens, encumbrances, judgments, awards, losses, costs, expenses, and suits or actions or proceedings, including reasonable expenses, costs and attorney fees incurred by the Recipient and its officers, employees and agents, including consultants, in the defense, settlement or satisfaction thereof, for any injury, death, loss or damage to persons or property of any kind whatsoever, arising out of, or resulting from, the negligent acts, errors or omissions of the Contractor, including negligent acts, errors or omissions of its officers, employees, servants, agents, subcontractors and suppliers; and

Upon receipt of notice and if given authority, shall settle at its own expense or undertake at its own expense the defense of any such suit, action or proceeding including appeals, against the Recipient and its officers, employees and agents, including consultants, relating to such injury, death, loss or damage. Each party shall promptly notify the other in writing of the notice or assertion of any claim, demand, lien, encumbrance, judgment, award, suit, action or other proceeding hereunder. The Contractor shall have sole charge and direction of the defense of such suit, action or proceeding. The Recipient shall not make any admission which might be materially prejudicial to the contractor unless the contractor has failed to take over the conduct of any negotiations or defense within a reasonable time after receipt of the notice and authority above provided. The Recipient shall at the request of the Contractor furnish to the Contractor all reasonable assistance that may be necessary for the purpose of defending such suit, action or proceeding, and shall be repaid all reasonable costs incurred in doing so. The Recipient shall have the right to be represented therein by the advisory counsel of its own selection at its own expense.

The obligations of the Contractor under the above paragraph shall not extend to circumstances where the injury, or death, or damages is caused solely by the negligent acts, errors or omissions of the Recipient, its officers, employees, agents or consultants, including negligence in (1) the preparation of the Contract documents, or (2) the giving of directions or instructions with respect to preparation of the Contract by written order. The obligations of the Contractor shall not extend to circumstances where the injury, or death, or damages is caused, in whole or in part, by the negligence of any third party operator, not including an assignee or subcontractor of the Contractor, subject to the right of contributions as provided in the next sentence below. In case of joint or concurrent negligence of the parties hereto giving rise to a claim or loss against either one or both, each shall have full rights of contribution from the other.